

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JOHN DOE,
Plaintiff

v.

CITY OF SOMERVILLE,
JOSH WAIRI,
Defendants

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No. 1:22-cv-10091-RGS

**AFFIDAVIT OF SARA ELIZABETH BURNS IN SUPPORT OF PLAINTIFF'S
MOTION FOR DEFAULT JUDGMENT AGAINST DEFENDANT JOSH WAIRI**

1. I am Sara Elizabeth Burns, an attorney duly licensed in the Commonwealth of Massachusetts and attorney for the Plaintiff in this action.
2. This affidavit is executed based on my own information and beliefs and in accordance with Fed. R. Civ. P. 55(b) for the purpose of obtaining a Default Judgment against Defendant Josh Wairi ("Wairi") for failure to answer or otherwise defend as to Plaintiff's Complaint.
3. The Complaint in the above action was filed on January 21, 2022. *Doe v. Somerville; Wairi*, Dk. 1.
4. During this case, Wairi has been in the custody of the Federal Bureau of Prisons, following his conviction for transportation of child pornography (18 U.S.C. §2252A(a)(1)) and possession of child pornography (18 U.S.C. §2252A(a)(5)(B)). *U.S. v. Wairi*, No. 1:14-cr-10143-WGY, Dk. 91, 143.
5. In this case, Plaintiff filed an *Ex Parte* Motion to Extend the Time for Service of Process on Wairi on April 19, 2022. *Doe v. Somerville; Wairi*, Dk. 9.
6. The Court granted the Motion to Extend on April 20, 2022, which allowed until May 5, 2022 to serve Wairi and file the return. *Doe v. Somerville; Wairi*, Dk. 10.

7. At the time of service, Wairi was incarcerated at Federal Correctional Institution, Schuylkill, Minersville, Schuylkill County, Pennsylvania. *Doe v. Somerville; Wairi*, Dk. 15.
8. On April 19, 2022, Wairi was served in hand and in accordance with the laws and rules of Pennsylvania. *Doe v. Somerville; Wairi*, Dk. 15.
9. I filed the return of service on May 4, 2022. *Doe v. Somerville; Wairi*, Dk. 15.
10. On July 11, 2022, I served requests for admissions upon Defendant Wairi and filed these requests with the Court. *Doe v. Somerville; Wairi*, Dk. 19.
11. Wairi has never responded to the complaint, requests for admissions, or otherwise acknowledged this suit.
12. Each time I served Wairi with a document in this case, I checked the Federal Bureau of Prison's inmate locator (<https://www.bop.gov/inmateloc/>) and consulted with the specific facility's mailing instructions to ensure that my service reached Wairi.
13. The postal service has never returned any of the documents I served on Wairi.
14. Plaintiff filed a request for Entry of Default on December 5, 2022.
15. The Court issued a Notice of Default under Fed. R. Civ. P. 55(a) on December 6, 2022.
16. Plaintiff's claim is for significant injuries arising out of childhood sexual abuse related to Wairi's creation, possession, and distribution of images of Plaintiff's genitals.
17. Masha's Law (18 U.S.C. § 2255) states the plaintiff should be awarded actual damages or liquidated damages plus attorney's fees and costs.
18. Here, the costs were minimal in the action against Wairi.
19. Much of the work on the claim against Wairi is intertwined with the work in the matter against Wairi's co-defendant, City of Somerville. However, a conservative estimation

of the time I spent pursuing claims against Wairi is 38 hours.

20. Though I took this case on a contingency fee basis, had I charged by the hour, I would've charged \$350 per hour.
21. As a result, I calculate the attorney's fee in this case as \$13,300.
22. Wairi (Register Number 96146-038) is currently incarcerated at Metropolitan Detention Center Brooklyn, Kings County, New York.
23. According to the Federal Bureau of Prisons' inmate finder, Wairi is in his thirties.
24. Wairi filed a detailed motion for compassionate release pro se in his criminal case in August 2020, illustrating his competence. *U.S. v. Wairi*, 1:14-cr-10143-WGY, Dk. 194.
25. Based on this information, Wairi is a competent adult and is not presently engaged in military service.

Signed under the pains and penalties of perjury on January 5, 2023.

January 5, 2023

/s/ Sara Elizabeth Burns

Sara Elizabeth Burns, Esquire